

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION

ANTHONY BAUMGARDNER

PLAINTIFF

V.

NO. 3:21cv79-DMB-RP

THE KROGER CO., KROGER LIMITED
PARTNERSHIP I, JOHN DOES A-D

DEFENDANTS

NOTICE OF REMOVAL

COME NOW, Defendants, The Kroger Co. and Kroger Limited Partnership I (hereinafter "Kroger"), by and through counsel, Bill Luckett of Luckett Law Firm, P.A., and file and serve their Notice of Removal of that certain civil action pending in the County Court of DeSoto County, Mississippi, styled Anthony Baumgardner v. The Kroger Company, Kroger Limited Partnership I, John Does A-D, Civil Action No. CO2021-0485CD on the general docket of said court to the United States District Court for the Northern District of Mississippi, Oxford Division.

The above entitled suit was filed on March 10, 2021. Process was effected on Kroger by service upon Corporation Service Company located in Madison, Mississippi on March 17, 2021. Said suit is of the civil nature of which the district courts of the United States have original jurisdiction pursuant to 28 U.S.C. Section 1332(a)(1) as the suit is between citizens of different states and the matter in controversy exceeds \$75,000.00 exclusive of interest and costs.

As alleged in the Amended Complaint, the Plaintiff is a resident citizen of the state of Mississippi. Kroger Limited Partnership I is an Ohio limited partnership comprised of two partners - General Partner, KRGP Inc., and Limited Partner, The Kroger Co. KRGP Inc. and The Kroger Co. are Ohio corporations. The Kroger Co. has its principal place of business in Cincinnati, Ohio. Thus, both Kroger Limited Partnership I (and its partners) and The Kroger Co. are resident citizens of states other than the state of Mississippi. Thus, for removal purposes, Kroger is a resident citizen of Ohio.

The real controversy in said suit is, and at the time of commencement thereof was, and all times since, has been a controversy between citizens of different states. There is therefore complete diversity of citizenship between the Plaintiff and the Defendants. Pursuant to 28 U.S.C. Section 1441 (a) the citizenship of John Does A-D shall be disregarded for purposes of removal.

The Plaintiff alleged a specific amount in controversy. In the *ad damnum* portion of the Amended Complaint, "Plaintiff demands judgment of and from the Defendant compensatory damages and punitive damages up to Two Hundred Thousand Dollars (\$200,000.00) together with interest from the date of judgment, attorney's fees and all costs of court." Based on the Plaintiff's demand, the real amount in controversy clearly exceeds \$75,000.00, exclusive of

interest and costs. The real controversy in said suit is, and at the time of commencement thereof was, and at all times since, has been a controversy between citizens of different states. Therefore, the District Courts of the United States have original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1).

Based on the foregoing facts, the real amount in controversy exceeds \$75,000.00, exclusive of interest and costs. The real controversy in said suit is, and at the time of commencement thereof was, and at all times since, has been a controversy between citizens of different states. Therefore, the U.S. District Court for the Northern District of Mississippi, Oxford Division has original jurisdiction.

Respectfully submitted,

THE KROGER CO. AND KROGER
LIMITED PARTNERSHIP I

s/Bill Luckett
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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2021, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following: Jefferson D. Gilder, Esquire.

s/Bill Lockett

BILL LUCKETT